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RECENT IMPORTANT DECISIONS

CARRIERS—TELEGRAM NOT ORDER REQUIRED BY BILL OF LADING—A car of oil was shipped over the defendant's line to the order of the consignor, "notify Royal Crown Soap Limited." Plaintiff purchased the cargo, and the bill of lading was indorsed to him. Upon arrival of the car at its destination, the defendant notified Royal Crown Soap Limited. Plaintiff was notified, and sent this telegram: "Am doing all possible locate documents in order stop demurrage suggest you establish bond to produce documents and unload car." The soap company advised the defendant of receipt of the telegram, and the carrier, relying upon this, allowed the company to unload the car. *Held*, the telegram was not authority to deliver without production of the bill of lading; that at best it was a suggestion as to how possession of the oil might be obtained before the plaintiff could locate the necessary documents. *First Nat. Bank of Chicago v. Rogers, Brown and Co.*, (1921), 273 Fed. 529.

When no bill of lading is issued, the carrier is justified in treating the consignee as owner, and may deliver the goods to him without requiring presentation of a bill of lading. *Schlichting v. C. R. I. & P. R'y. Co.*, 121 Ia. 502. In the absence of evidence to the contrary, it is presumed that the consignee was to gain possession of the goods without production of the bill of lading. *Edelstone v. Schimmel*, 233 Mass. 45. Where nothing appears in the bill of lading to the contrary, the carrier may treat the consignee as owner of the goods, and may deliver them to him without his producing the bill of lading. *Pratt v. N. P. Express Co.*, 13 Ida. 373. If the carrier has notice of the fact that the consignee is not owner of the goods, delivery to him is conversion. Any kind of notice is sufficient. See *Nat. Bank of Chester v. Atlanta and Charlotte Air Line R'y. Co.*, 25 S. C. 216; *Atlantic Navigation Co. v. Johnson*, 27 N. Y. Super. 474. Proper indorsement of an order bill of lading gives the indorsee an unqualified right to the goods. *Paxson Bros. v. Warfield*, 6 Ga. App. 315. It is not a breach of duty for the carrier to surrender the goods to such indorsee without his giving the bill of lading to the carrier, though this was agreed to between consignor and carrier. *Chicago Packing and Provision Co. v. Savannah, Fla. and Western R'y. Co.*, 103 Ga. 140. The carrier may not deliver the property to the consignee until the bill of lading is properly indorsed, if it is provided in the bill of lading that it shall be surrendered properly indorsed before the delivery of the shipment. *Southern R'y. Co. v. Massee and Felton Lumber Co.*, 23 Ga. App. 309. Nor, if the bill of lading provides that it shall be surrendered only when indorsed by the consignor, may the carrier deliver the goods to the consignee, without such indorsement and surrender of the bill of lading, though the bill of lading directs the goods to the consignee or his order. *Thomas v. Blair*, 185 Mich. 422. If goods are shipped to the order of the consignor, "notify" a third person, at destination, a delivery to such third person is conversion by the carrier, unless by the order of the consignor. *North Penn. R. R. Co. v. Commercial Bank*, 123 U. S. 727. If a carrier delivers goods without requiring

presentation of the bill by the consignee, and is forced to reimburse the consignor, it cannot later recover from the one to whom it delivered the goods, who has paid for them, as there is no delivery by mistake, according to the usual meaning of that term. *Long Island R. R. Co. v. Structural Concrete Co.*, 110 N. Y. S. 379. Under the Carmack Amendment to the Interstate Commerce Act, a delivery of the goods by the last carrier without requiring a surrender of the bill of lading makes the initial carrier liable to any holder of the bill of lading. *Winget v. Grand Trunk Western R'y*, 210 Mich. 100. A shipping receipt naming a third person as consignee is not a bill of lading, and so need not be produced before delivery of the goods by the carrier. *Green v. B. and O. R. R. Co.*, 206 Mass. 331. Nor is it necessary that a non-negotiable bill of lading be surrendered or presented to the carrier before delivery of the goods. *Penn. R. R. Co. v. Titus*, 142 N. Y. S. 43. When the consignee has made part payment, and tender of the balance due for the goods shipped to the order of the consignor, it is wrongful for the consignor to withhold possession of the bill of lading; the consignee is equitably entitled to the goods, and the carrier under such circumstances is not liable for transferring the goods to the consignee. *The Asiatic Prince*, 108 Fed. 287. Stipulations for production of the bill of lading before delivery of the cargo may be waived by the express or tacit consent of the consignor, as by having acquiesced in prior deliveries without the production of the bill of lading. *Salberg v. Pa. R. R. Co.*, 237 Pa. 495. The test for determining whether there is an express waiver by consent, other than an indorsement and transfer of the bill of lading, seems to be whether the shipper has caused the carrier reasonably to believe another person is the owner of the goods, and entitled to their possession. Thus, a conclusion contrary to that reached in the principal case was obtained in *Schwarzschild and Sulzberger Co. v. Savannah, Fla. and Western R'y. Co.*, 76 Mo. App. 623. The telegraphic instructions to the consignee in that case were: "Use your stuff. Get railroad inspection your car; receipt for same in damaged condition." So in *Mitchell v. C. & O. R'y. Co.*, 17 Ill. App. 231: "Do the best you can; whatever you do will be satisfactory." The construction placed upon the telegraphic authority in the present case, considered in view of the test enounced, is unquestionably correct.

CHARITIES—BEQUEST TO TOWN ON CONDITION OF PERPETUAL CARE OF BURIAL LOT VALID—Testator bequeathed to a town, on condition that it perpetually care for his burial lot, a sum greater than was needed for that purpose. The heir-at-law sought to secure such excess amount. *Held*, a good bequest to the town, which, under the statutory authority to purchase and hold real and personal property for public uses, may take property by will on consenting to act as trustee of the fund for care of the burial lot. *Petition of Tuttle* (N. H. 1921) 114 Atl. 867.

While a perpetual trust for the maintenance of a cemetery is valid, a trust to perpetually care for a grave violates the rule against perpetuities and is void, apart from statutory permission. *McCartney v. Jacobs*, 288 Ill. 568, 4 A. L. R. 1120, note, *Shipper v. Industrial Trust Co.* (R. I. 1920), 110 Atl. 410.